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3. PATENTABLE SUBJECT MATTER

3-1. Kinds of Invention That Are Patentable

To be patentable, the invention must be an art, machine, manufacture, or composition of matter, or an improvement thereof, or an asexually reproduced distinct and new variety of plant other than tuberpropagated, or a design for an article of manufacture. Compare 10-8-2.

3-2. Art

"An art, process or method is a mode of treatment of certain materials to produce a given result. It is an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing." Cochrane v. Deener, 1877 C.D. 242; 11 O.G. 687. A method which produces an intangible result, such as transmitting speech by a telephone comes within this definition also.

3-3. Machine

A machine is any device consisting of two or more resistant, relatively constrained parts, which, by a certain predetermined intermotion, may serve to transmit and modify force and motion so as to produce some given effect or to do some desired kind of work.

3-4. Manufacture

A manufacture or an article manufacture is anything made from raw materials by the hand, by machinery, or by art.

3-5. Composition of Matter

"A patentable compound or composition of matter is one which is produced by the intermixture of two or more specific ingredients, and possesses properties pertaining to none of those ingredients separately, thereby accomplishing a new and useful result." Lane v. Levi, 1903 C.D. 601; 104 O.G. 1898.

3-6. Improvement

Improvement patents may be obtained in any one of the statutory classes (art, machine, manufacture, and composition of matter).

3-7. **Plant**

A plant to be patentable must be an asexually reproduced distinct and new variety, other than a tuberpropagated plant. See 18-1.

3-8. **Design**

A design to be patentable must be based upon the appearance of an article of manufacture which is new, original and ornamental. See 17.

Some Requisites for Obtaining A Patent

3-9. **Novelty**

The first requisite for obtaining a patent is that the applicant must be able to swear (or affirm) that he verily believes himself to be the original and first inventor of the improvement described and claimed. But regardless of the fact that, as far as applicant knew, he was the first inventor he will be refused a patent if the Patent Office has evidence that the subject matter claimed was "known or used by others in this country before his invention or discovery thereof" or "patented or described in any printed publications in this or any foreign country, before his invention or discovery thereof."

3-10. **Utility**

To be useful, a device must be capable of construction and must be operative. An art must be capable of being carried out. The fact that a better or less expensive device or art exists for accomplishing the same objective as the device or art applied for, does not bar the grant of a patent provided the device or art applied for patentably is different.

3-11 **Invention**

"It is not enough that a thing shall be new, in the sense that in the shape or form in which it is produced, it shall not have been before known, and that it shall be useful, but it must, under the Constitution and the statute, amount to an invention or discovery." Thompson v. Boisselier, 114 U.S. 1.